IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

R.S.A. No. 165 of 2006.

Judgement reserved on:

Date of decision : August 3, 2006.

Bir Singh & anr. …….. Appellants.

Versus

Kishan Chand ……. Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellants: Mr. Ajay Sharma, Advocate.

For the respondent: Mr. Shrawan Dogra, Advocate.

Surjit Singh J. (Oral).

Heard and gone through the record.

Respondent- plaintiff filed a suit for possession of land, comprised in khasra Nos. 166/1 and 169, alleging that earlier his father was in possession of the said land as a tenant and that after the conferment of the proprietary rights, under the provisions of H.P. Tenancy and Land Reforms Act, he (plaintiff's father) became the owner. He claimed that possession had been with the father of the plaintiff from the very beginning, i.e. since the inception of

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Whether reporters of local Papers may be allowed to see the judgment?

tenancy, but in the year 1981-82, the father of the defendants-appellants, who was a brother of the father of the plaintiff, got his name incorporated in the column pertaining to the name of persons in possession and on the strength of that entry forcibly dispossessed the plaintiff from the suit land in the year 1990.

Suit was contested by the appellants- defendants. They alleged that the suit was barred by time, the plaintiff had no cause of action nor did he have the locus standi. Further, it was alleged that suit was not maintainable. Objection that the suit was bad on account of non-joinder of necessary parties, was also raised. It was pleaded that the suit land was held by the father of the appellants- defendants, the father of the plaintiff and another brother of theirs, named Sunko, jointly as tenants, under the previous owners, named Birbhan and Kishori Lal, and therefore, the conferment of proprietary rights upon the plaintiff's father in respect of the entire suit land was a wrong and a bad decision taken by the Revenue Authorities, and that that decision had been taken behind the back of the defendants' father.

Trial court framed various issues and ultimately came to the conclusion that the plaintiff's father had been an exclusive tenant of the suit land, under the previous owners and so by virtue of the provisions of Section 104 of the H.P. Tenancy and Land Reforms Act, he became the owner and that the entry in the jamabandi for the year 1981-82, showing the father of the appellants- defendants in possession was bad. Consequently decree for possession was passed in favour of the respondent- plaintiff.

Appellants, feeling aggrieved by the said decree of the trial court, went in appeal to the District Judge. Their appeal stands dismissed. Findings and the decree of the trial court were affirmed.

Learned counsel representing the appellants- defendants has made a number of submissions. His first submission is that the plea taken by the appellants- defendants in the written statement that their father, the father of the plaintiff and another brother of the fathers of the defendants and the plaintiff were joint tenants under the previous owners had not been denied by the plaintiff by filing replication, and this plea having not been denied, the finding should have gone against the respondent- plaintiff. In support of his contention, he places reliance upon the provision of Order 8, Rule 5 of the Code of Civil Procedure, as also a judgement of the Hon'ble Supreme Court in **Badat and Co., Bombay** v. **East India Trading Co.** [AIR 1964 SC 538]. Order-8, Rule 5 of the Code of Civil Procedure, as also the aforesaid precedent say that the allegations made in the plaint are required to be specifically denied in the written statement. Replication is not a part of the pleadings. Only the plaint and the written statement are the part of the pleadings, in the strictest sense of the term. When the plaintiff had categorically stated that his father was earlier in exclusive possession as a tenant under the previous owners and that therefore, the proprietary rights were conferred upon him in terms of the provisions of the H.P. Tenancy and Land Reforms Act, where was the need for the plaintiff to have filed replication to the plea taken by the defendants in their written statement that father of the plaintiff was not the exclusive tenant but there were three joint tenants.

As a matter of fact, the aforesaid plea of the defendants was in denial of the plea of the plaintiff that his father was earlier an exclusive tenant and thereafter an exclusive owner.

Next submission made by the learned counsel is that the suit was barred by time. According to him entry in the jamabandi showing the father of the defendants- appellants in possession of the suit land appeared for the first time in the year 1981-82 to the knowledge of the plaintiff/ his father and that that entry was required to be construed as an order and hence, the limitation was governed by Article 100. The submission is misconceived. No order was passed for incorporation of the name of the father of the appellants- defendants in the jamabandi for the year 1981-82. It has been observed so, because no such order has been placed on record by the appellants- defendants. Moreover, an entry cannot be construed to mean an order for the purpose of Article 100 of the Limitation Act.

Learned counsel further submitted that defendants had been in possession of the suit land, even according to the jamabandi for the year 1981-82, atleast since the year 1981 and that the plaintiff was in the know of this fact, but with a view to bringing his suit within time, he falsely pleaded that he had been dispossessed in the year 1990. Whether the plaintiff had been dispossessed in the year 1990 or 1981 or even prior to that that is of little consequence, because in a suit for possession, based on title, limitation begins to run not from the date on which the plaintiff ceases to be in possession, but from the time when the defendant set up plea of adverse possession, per Article 65 of the Limitation Act.

Appellants- defendants have not set up the plea of adverse possession in this case.

Yet another submission made by the counsel for the appellants- defendants is that the issues arising out of the pleadings were not framed correctly, inasmuch as no issue was framed with respect to defendants' plea that their father was a joint tenant with the father of the plaintiff. It is true that no specific issue qua this plea was framed, but the point is covered by issue No.1, because while leading evidence in rebuttal of issue No.1, the onus of which had been placed on the plaintiff, the defendants-appellants could have proved their abovesaid plea, and in fact they did lead evidence in support of this plea, which is on record in the form of copies of revenue entries and depositions of one of the appellants and some other persons.

It is also the contention of the learned counsel that the suit was bad for non-joinder of the previous owners, under whom the plaintiff was held as tenant. Now when the previous owners had been divested of their ownership by virtue of the enactment of H.P. Tenancy and Land Reforms Act, and the ownership rights stood conferred upon the tenants, it is not understood how the previous owners are the necessary parties.

Rest of the submissions made by the learned counsel for the appellants- defendants pertain to the appreciation of evidence. The trial court and the first appellate court have thoroughly examined the entire evidence. Jamabandi for the year 1976-77, copy Ex. P-4 (also Ex. D-10) clearly shows that the father of the plaintiff was in exclusive possession, as a tenant, under the previous owners of

the whole of khasra number 178, measuring 60 kanals 6 Marlas. During the settlement of 1981-82, as is clear from Misal Hakiet, copy Ex. D-6 (also Ex. P-3) out of Khasra No.178, new numbers 160, 291, 292 and 295 were carved out. In 1994-95, consolidation took place in the area and in the course of such consolidation, khasra Numbers 160, 291, 292 and 295 were assigned new numbers, by which the suit land is described in the plaint, i.e. khasra No. 166/1 and 169. The aforesaid entries in the jamabandies clearly show that the predecessor of the plaintiff was the exclusive tenant on the suit land. Red note in the remarks column, in the copy of jamabandi for the year 1976-77, shows that the proprietary rights in respect of the suit land were also conferred exclusively upon the father of the plaintiff. As a matter of fact entries in the Jamabandis show that the father of the defendants held some other land under the previous owners as an exclusive tenant and proprietary rights in respect of that land were conferred upon him. Similarly the third brother of the fathers of the parties was a tenant on another chunk of land under the previous owners and ownership rights in respect of that land stand conferred upon him. The name of the father of the appellants- defendants appeared in the Misal Hakiet prepared on the accomplishment of the settlement process, copy Ex. D-6, but it is not indicated in the said Misal Hakiet as to in what capacity he was shown in possession of the suit land, when admittedly, the owner of the suit land is shown to be the father of the plaintiff. The entry reads that the father of the appellants- defendants is in possession, on account of his being the brother (assumably of the owner).

As a result of the above stated position, I am not convinced that any substantial question of law arises. Hence the appeal is dismissed.

CMP No. 239 of 2006.

Interim order, dated 12.4.2006 stands vacated and the application is dismissed.

August 3, 2006. **(Surjit Singh),**
(Hem) **Judge.**